

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARLENE JEAN MOSLEY,

Plaintiff,

v.

WELLS FARGO BANK NA, et al.,

Defendants.

Case No. [17-cv-05064-JSC](#)

**PRETRIAL ORDER FOR BENCH
TRIAL**

Following the Case Management Conference held on May 24, 2018, IT IS ORDERED
THAT:

I. CASE MANAGEMENT SCHEDULE

Deadline for Expert Disclosures: September 14, 2018

Deadline for Expert Rebuttal Reports: October 12, 2018

Discovery Cut-Off: November 2, 2018

Deadline for Filing Dispositive Motions: December 6, 2018

The parties are referred to the Northern District of California's mediation panel for
mediation to occur within 90 days. *See* ADR L.R. 6-2.

II. TRIAL DATE

A. A bench trial shall begin on **March 25, 2019, at 8:30 a.m.**, in Courtroom F, 15th
Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

B. The length of the trial will not exceed two days.¹

¹ Wells Fargo requests a bench trial. (Dkt. No. 53 at 5:22-24.) While Ms. Mosley demanded a jury trial in state court (Dkt. No. 1 at 10), after Wells Fargo removed the case to federal court Ms. Mosely was required to serve a demand for a jury trial within 14 days after she was served with Well Fargo's notice of removal. Fed. R. Civ. Pro. 81(c)(3)(B). Wells Fargo served the notice of removal on September 1, 2017. (Dkt. No. 7.) Ms. Mosely did not serve a demand for a jury trial. Accordingly, Wells Fargo's request for a bench trial is granted.

1 **III. PRETRIAL CONFERENCE**

2 A Final Pretrial Conference shall be held on **February 21, 2019, at 2:00 p.m.**, in
3 Courtroom F, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco. Lead trial
4 counsel shall attend the Conference.

5 **IV. TRIAL PROCEDURES**

6 A. Counsel and unrepresented parties shall *not* prepare a Joint Pretrial Conference
7 Statement. Instead, twenty (20) calendar days in advance of the Final Pretrial Conference, please
8 do the following:

- 9 1. In lieu of preparing a Joint Pretrial Conference Statement, the parties shall meet
10 and confer telephonically or in person to prepare and file a jointly signed,
11 Proposed Final Pretrial Order that contains: (a) a brief description of the
12 substance of claims and defenses which remain to be decided; (b) a statement of
13 all relief sought; (c) all stipulated facts; (d) a list of all factual issues that remain
14 to be tried and organized by counts; (e) a joint exhibit list in numerical order,
15 including a brief description of the exhibit and Bates numbers, a blank column
16 for when it will be offered into evidence, a blank column for when it may be
17 received into evidence, and a blank column for any limitations on its use; and
18 (f) each party's separate witness list for its case-in-chief witnesses (including
19 those appearing by deposition) providing, for all such witnesses other than an
20 individual plaintiff and an individual defendant, a short statement of the
21 substance of his/her testimony and, separately, what, if any, non-cumulative
22 testimony the witness will offer. If non-cumulative testimony is not spelled
23 out, the Court will presume the witness is cumulative. For each witness, state
24 an hour/minute time estimate for the direct examination (only). Items (e) and
25 (f) should be appendices to the proposed order. The objective is to convert the
26 proposed order to a final order with the benefit of any discussion at the Final
27 Pretrial Conference.
28 2. File each side's proposed Findings of Fact and Conclusions of Law;
 3. File each side's Trial Brief;

B. Not less than ten (10) days before the Pretrial Conference, counsel and/or the parties shall file and serve any objections to exhibits.

C. Exhibits and witnesses not included in the proposed Joint Pretrial Order pursuant to Paragraph IV.A.1. above may not be used in a party's case-in-chief and may not be used during cross examination of the other side's case-in-chief (other than for impeachment). Defense witnesses are considered case-in-chief witnesses, not "rebuttal" witnesses. Objections to exhibits not raised pursuant to Paragraph IV.A.2 are waived.

D. Two (2) Chambers' copies of all of the aforementioned documents shall be hand-delivered to Chambers at the time of filing. The Joint Proposed Final Pretrial Order and Proposed Findings of Fact and Conclusions of Law shall be submitted via e-mail as attachments, in MSWord format, to JSCPO@cand.uscourts.gov. Hard copies must be provided as well. All hard-copy submissions should be three-hole punched.

E. At the Final Pretrial Conference, the above submissions shall be considered and, as needed, argued.

F. Should a daily transcript and/or real-time reporting be desired, the parties shall make arrangements with Richard Duvall, Supervisor of the Court Reporting Services, at (415)

1 522-2079, or richard_duvall@cand.uscourts.gov , at least fourteen (14) calendar days prior to the
2 trial date.

3 G. During trial, counsel may wish to use overhead projectors, laser-disk/computer
4 graphics, poster blow-ups, models, or specimens of devices. Equipment should be shared by all
5 counsel to the maximum extent possible. The Court provides no equipment other than an easel.
6 The United States Marshal requires a court order to allow equipment into the courthouse. For
7 electronic equipment, parties should be prepared to maintain the equipment or have a technician
8 handy at all times. The parties shall tape extension cords to the carpet for safety. The parties may
9 work with the deputy clerk, Ada Means (415-522-2015), on all courtroom-layout issues.

10 **SCHEDULING**

11 H. Trial will be conducted from 8:30 a.m. to 2:30 p.m. (or slightly longer to finish a
12 witness) with one fifteen-minute break and one forty-five (45) minute lunch break, Monday
13 through Friday, excluding holidays.

14 **OPENING STATEMENTS**

15 I. If openings are permitted, each side will have a predetermined time limit for its
16 opening statement (usually no more than 45 minutes per side). Counsel should meet and confer to
17 exchange any visuals, graphics or exhibits to be used in the opening statements, allowing for time
18 to work out objections and any reasonable revisions.

19 **WITNESSES**

20 J. At the close of each trial day, all counsel shall exchange a list of witnesses for the
21 next two full court days and the exhibits that will be used during direct examination (other than for
22 impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall
23 provide any objections to such exhibits and shall provide a list of all exhibits to be used with the
24 same witness on cross-examination (other than for impeachment). The first notice shall be
25 exchanged prior to the first day of trial. All such notice should be provided in writing.

26 K. The parties shall have all upcoming witnesses on the same day available in the
27 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
28 proceed with the evidence will usually be deemed to constitute resting. If counsel plans to read in

1 a transcript of a deposition, counsel must have a deposition prepared and vetted early on to read
2 into the record.

3 L. On the first day of trial, counsel shall bring the original and clean copies of any
4 deposition(s) intended to be used during the course of the trial. Any corrections must be readily
5 available. If counsel need to use the deposition during a witness examination, they shall provide
6 the Court with a copy with any corrections at the outset of the examination.

7 M. In lieu of direct testimony, the Court will consider receiving “prepared direct”
8 testimony in the form of declarations. When the witness is presented, the proponent must verbally
9 summarize the direct. Live cross-examination and redirect shall then occur. The parties may also
10 agree to submit the entire testimony of a witness via written testimony.

11 **EXHIBITS**

12 N. Prior to the final pretrial conference, counsel must meet and confer in person to
13 consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion over
14 the precise exhibit.

15 O. Use numbers only, not letters, for exhibits, preferably the same numbers as were
16 used in depositions. Blocks of numbers should be assigned to fit the need of the case (e.g.,
17 Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single
18 exhibit should be marked only once, just as it should have been marked only once in discovery
19 pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit, then the
20 defendant should not re-mark the exact document with another number. Different versions of the
21 same document, e.g., a copy with additional handwriting, must be treated as different exhibits with
22 different numbers. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be
23 marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s Exhibit” or “Defendant’s
24 Exhibit.” If an exhibit number differs from that used in a deposition transcript, then the latter
25 transcript must be conformed to the new trial number, if and when the deposition testimony is
26 used (so as to avoid confusion over exhibit numbers). There should be no competing versions of
27 the same exhibit number; any discrepancies must be brought to the Court’s attention promptly.
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P. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA TRIAL EXHIBIT 100 Case No. _____ Date Entered _____ By _____ Deputy Clerk

Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a single set of all trial exhibits that will be the official record set to be used with the witnesses and on appeal. Each exhibit must be tagged, three-hole-punched, separated with a label divider identifying the exhibit number, and placed in 3-ring binders. Spine labels should indicate the numbers of the exhibits that are in the binders. Each set of exhibit binders should be marked as "Original". Deposit the exhibits with the deputy clerk ten (10) days before the Pretrial Conference.

Q. Counsel must consult with each other and with the deputy clerk at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, counsel should bring them promptly to the Court's attention.

X. In addition to the official record exhibits, three (3), joint sets of bench binders containing a copy of the exhibits must be provided to the Court ten (10) days before the Pretrial Conference, and should be marked as "Chambers Copies". Each exhibit must be separated with a

1 label divider identifying the exhibit number. (An exhibit tag is unnecessary for the bench set.)
2 Spine labels should indicate the numbers of the exhibits in the binders.

3 Y. Before the closing arguments, counsel must confer with the deputy clerk to make
4 sure the exhibits in evidence are in good order. Counsel may, but are not required to, jointly
5 provide a revised list of all exhibits actually in evidence (and no others) stating the exhibit number
6 and a brief, non-argumentative description (e.g., letter from A. B. Case to D. E. Frank, dated
7 August 17, 1999).

8 **TIME LIMITS**

9 Z. In certain cases, the Court will set fixed time limits at the final pretrial conference.
10 All of your examination time (whether direct, cross, re-direct or re-cross) for all witnesses and side
11 bar conference time must fit within your time limit and you may allocate it as you wish. Opening
12 and closing time limits shall be considered separately.

13 **IT IS SO ORDERED.**

14 Dated: May 25, 2018

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18 JACQUELINE SCOTT CORLEY
United States Magistrate Judge
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NORTHERN DISTRICT OF CALIFORNIA

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 25, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marlene Jean Mosley
2836 Mrytle Street
Oakland, CA 94608

Dated: May 25, 2018

Susan Y. Soong
Clerk, United States District Court

By: _____

Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY

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